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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: D-187452

DATE: December 21, 1977

MATTER OF: Lorraine N. Bain et al. - Retroactive Promotion and Backpay - Failure to Comply with Labor-Management Agreement because of CSC Suspension of Promotion Authority

DIGEST:

CSA Region VI employees in career-ladder positions were not promoted in accordance with national labor-management agreement solely because CSC suspended Region VI's classification and promotion authority. Classification of positions involved was not challenged. Exceptions taken to merit promotion plan were not raised in other regions, were not pursued at CSA's national headquarters, and were ultimately withdrawn, at least insofar as career-ladder promotions were concerned. GAO will not object to retroactive promotions and backpay in these circumstances.

By letter dated September 15, 1976, from Mr. Alphonse Rodriguez, the Associate Director for Administration, the Community Services Administration (CSA) requests a decision as to whether promotions may be made retroactive to the dates indicated and backpay granted for the following employees: Lorraine N. Bain, April 25, 1976; Linda J. Hamilton, January 18, 1976; Barbara J. Hill, January 11, 1976; Ruby Miller, January 11, 1976; Candelario Munoz, Jr., January 11, 1976; Sharon B. Nelson, March 14, 1976; and Doris Todd, March 14, 1976. The circumstances giving rise to this question, as related by the CSA, are set forth below.

These employees occupied career-ladder positions in the CSA's Region VI. All requirements and conditions for their non-competitive career-ladder promotions had been met and they had been recommended for promotion on the dates specified. The national labor-management agreement between the American Federation of Government Employees (AFGE) and CSA provided for their promotions on those dates. However their promotions were delayed solely because the Civil Service Commission (CSC) had suspended Region VI's classification and promotion authority in December 1975.

The suspension of Region VI's classification and promotion authority resulted from a personnel management evaluation conducted by the CSC in 1975 which disclosed some deficiencies in the classification of positions and raised questions about the merit promotion plan contained in the national labor-management agreement

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between the CSA and A⁷GE. However, the CSC took no exceptions to the classification of the positions here involved. Moreover, although advised that Region VI had no authority to modify the national labor-management agreement containing the merit promotion plan, the CSC did not pursue the matter with the CSA national headquarters. Neither did it suspend the promotion authority of several other CSA regions evaluated at about the same time which operated under the same plan, and promotions were not delayed in those other regions. Region VI's authority to make career-ladder promotions was restored by the CSC on May 14, 1976, without any modification having been made in the merit promotion plan, and the employees here involved were all subsequently promoted.

The provision of the national labor-management agreement here involved reads as follows:

"Each employee serving below the journeyman level in a career ladder will be promoted to the next grade level when he has met the qualification requirements of the position, demonstrated ability to perform at the higher level, and if there is enough work at the full performance level for all employees in the career ladder group. Whenever an employee is denied a promotion, he will be given a written justification for the basis of denial."

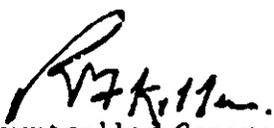
As the CSA correctly points out it has been held that where a lawful, properly includable provision of a labor-management agreement provides for promotion at a specified time, and, but for the agency's failure to comply with that provision, an employee would have been promoted at that time, such failure may be considered an unjustified or unwarranted personnel action within the purview of 5 U.S.C. 5596, and the promotion may be made retroactive and backpay awarded. 55 Comp. Gen. 42 (1975), B-189675, October 7, 1977. The novel issue here is whether a different result is required when the agency's failure to comply with the agreement is caused by the withdrawal of its classification and promotion authority by the CSC.

In this case, on the facts presented, we do not think so. The CSC took no exception to the classification of the positions here involved and it apparently withdrew whatever exceptions it had to the merit promotion program in the agreement at least insofar as career-ladder promotions were involved. Moreover, it is noted that career-ladder promotions are non-competitive and are excepted

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from the merit promotion plan. In these circumstances we think it would be unwarranted and unjustified to penalize these employees in Region VI, particularly when employees similarly situated in other regions operating under the same plan and agreement were timely promoted.

In view of the foregoing and since the CSC, while given an opportunity to do so, has not taken any exception to the facts presented by the CSA or voiced any opposition to the relief sought, this Office will not object to making the promotions of the listed employees retroactive to the dates indicated and the granting of backpay accordingly.


Deputy Comptroller General
of the United States